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MAR 24 2004

OFFICE OF PETITIONS

In re Application of
Heung Ki Cho, et al.
Application No. 09/995,885
Filed: November 28, 2001
Attorney Docket No. MOC-100XC1

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

The above-identified application has been referred to this Office for consideration of (1) the petition filed January 15, 2004 to accept the late payment of the issue fee and (2) the a petition under 37 CFR 1.137(b), filed January 27, 2004, to revive the instant nonprovisional application for a failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on November 28, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country. Accordingly, the application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) on January 13, 2003, which is prior to the mailing of the Notice of Allowance and Issue Fee Due on March 8, 2003. Consequently, the communications filed January 15, 2004 and January 27, 2004, are being construed as a petition under 37 CFR 1.137(b) to revive the application for a failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
- (2) the petition fee as set forth in 37 CFR 1.17(m); and
- (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded.

Receipt is acknowledged of the \$665 issue fee payment on January 15, 2004. However, petitioner is reminded that the Notice of Allowability and Notice of Allowance mailed March 8, 2003, did not require the submission of a publication fee. In view of the rescinding of the nonpublication request, a publication fee of \$300 is now due. Therefore, as authorized, and in order to expedite issuance of this application, the \$300 publication fee will be charged to petitioner's Deposit Account No. 50-1731. If publication of the application does not occur, applicant may file a request for a refund after the patent issues. See 37 CFR 1.211(e).

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being forwarded to Publication Division.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy